

2007 JAN
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
PLAINTIFF,)
V.) Case No. 05-CV-11818-RWZ
TERRENCE J. JOYCE,)
DEFENDANT,)

)

MOTION TO STRIKE PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS PURSUANT TO F.R.C.P. 41(b)

The defendant, Terrence J. Joyce, hereby requests that the District Court strike the plaintiff's motion in opposition to the defendant's motion to dismiss for the following reasons:

1. On September 2, 2005, the United States filed and action against the defendant for an alleged HEAL Loan debt.
2. On November 18, 2005, this court issued a notice of a scheduling conference.
3. On December 15, 2005, the court conducted a scheduling conference with both of the parties. At the conference, the defendant admitted that he had student loan debt from medical school, but did not admit that he owed money to Dartmouth Medical School or the United States for a HEAL

loan. Rather, he requested that the United States provide him with a copy of the original promissory notes of this alleged debt to assure him that such a debt exists. The United States has failed to produce such a document to date.

4. The defendant has provided the plaintiff with the majority of information that the plaintiff has requested. The plaintiff has refused to provide the defendant with a reasonable settlement option of any type.
5. The plaintiff has a history of civil procedure violations before this court, and failed to file his motion to oppose the defendant's motion to dismiss within 14 days of the defendant's motion to dismiss as is required by local rule 7.1 b (2). Since the plaintiff did not contact the defendant or the court to seek additional time for filing, the court should not allow the plaintiff to file his motion on January 10, 2007 which is over a week late.
6. The defendant certifies that he attempted to contact the plaintiff by phone prior to filing this motion to dismiss on December 16, 2006, but the plaintiff did not return his phone call.

For all of the reasons stated above, the defendant respectfully requests that the court strike the Plaintiff's Motion to Oppose the Defendant's Motion to Dismiss from the record and dismiss this case in accordance with F.R.C.P. Rule 41(b) for failure to prosecute.

Respectfully Submitted,

Terrence J. Joyce



Terrence J. Joyce

Dated: JANUARY 22, 2007

CERTIFICATE OF SERVICE

I, Terrence J. Joyce, hereby certify that a copy of the foregoing document has been served, pro se, via certified United States mail, postage prepaid on the 22 day of January, 2007 upon the following parties:

United States of America
1 Courthouse Way, Suite 9200
Boston, Mass. 02210